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Supreme Court, U.S.
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In The

Supreme Court of the United States

DALE DWAYNE CRAIG,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana Court Of Appeal, First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a mandatory sentence of life in prison without the possibility of parole, probation or suspension, imposed against one who was under the age of 18 at the time of his offense, constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

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OPINION AND ORDER BELOW

The order of the Louisiana Supreme Court (App. *infra*, 12) is reported at 959 So. 2d 518 (La. 2007). The opinion of the Louisiana Court of Appeal, First Circuit (App., *infra*, 1-11) is reported at 944 So. 2d 660 (La. App. 1 Cir. 2006).

JURISDICTION

The Louisiana Supreme Court's order was entered on June 29, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

La. R.S. 14:30(C) provides: "Whoever commits the crime of first degree murder shall be punished by death or life imprisonment at hard labor without

benefit of parole, probation or suspension of sentence in accordance with the determination of the jury."

STATEMENT

This case raises the question whether the principles underlying the Court's ruling in *Roper v. Simmons*, 543 U.S. 551 (2005) that the juvenile death penalty violates the Eighth Amendment compel the same ruling with respect to the juvenile life without parole sentence. Petitioner, Dale Dwayne Craig (Craig) was convicted of first degree murder on October 20, 1994 and was sentenced to death on January 13, 1995. App., *infra*, 2. He was age 17 at the time of the crime for which he was convicted. App., *infra*, 3 n.2. Following this Court's ruling in *Roper*, the trial court vacated the death sentence and re-sentenced Craig to life in prison without benefit of parole on May 6, 2005. App., *infra*, 2-3. Craig timely filed a motion for reconsideration of the life without parole sentence on the ground, among others, that the sentence violated the Eighth Amendment's ban against cruel and unusual punishment. The trial court denied the motion for reconsideration without reasons. App., *infra*, 3.

Craig appealed the trial court's decision to the Louisiana Court of Appeal, First Circuit. In his appeal, Craig again asserted, among other things, that his sentence violated the Eighth Amendment under "[t]he principles underlying the decision in *Roper v.*

Simmons, bolstered by continuing scientific research and the great weight of international law." App., *infra*, 4. Relying on its own ruling in a prior case, and rejecting *Roper* as inapposite, the court of appeal affirmed the sentence. App., *infra*, 5-6. Craig sought discretionary review by the Louisiana Supreme Court, which was denied by that court on June 29, 2007. App., *infra*, 12.

REASONS FOR GRANTING THE PETITION

This case presents an opportunity for the Court to consider the applicability of the Eighth Amendment principles it enunciated in *Roper v. Simmons* to the next most severe juvenile sentence: life in prison without the possibility of parole. This is an important question of law that has not been, but should be, settled by this Court.

In *Roper*, the Court concluded that there is "sufficient evidence that today our society views juveniles . . . as 'categorically less culpable than the average criminal.'" 543 U.S. at 567.[1] The Court

[1] The Petitioner does not contend that there exists a national consensus against the juvenile life without parole sentence equivalent to that found by the Court in *Roper* to exist against the juvenile death penalty. There is, however, an evident trend in that direction. Impositions of the sentence in the United States dropped from a high of 152 in 1996 to only 54 in 2003. Human Rights Watch, Amnesty International, The Rest of Their Lives: Life Without Parole for Child Offenders in the United

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reasoned that the reduced culpability of juvenile offenders requires a correspondingly lower severity of punishment to meet the purposes of the death penalty: retribution and deterrence. Regarding retribution, the Court said: "Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult." *Id.* at 572. Similarly, the Court recognized that the lower likelihood that juvenile offenders engage in the kind of cost-benefit analysis that attaches weight to the possibility of harsh sentences reduced the deterrent value of harsh sentences: "Here, however, the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Id.*

These considerations apply with even greater force to sentences of life without benefit of parole imposed on juveniles. A juvenile who receives a life without parole sentence unquestionably receives a *greater* punishment that an adult receiving the same sentence. Because of their longer life expectancies, juveniles likely will spend many more years in prison,

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States 1 (2005), *available at* www.amnestyusa.org/countries/usa/clwop/report.pdf. In any event, as it did in *Roper*, the Court should "bring its independent judgment to bear on the proportionality of the [life without parole sentence] for a particular class of crimes or offenders." 543 U.S. at 574.

including the important developmental years of young adulthood. Imprisoning a 40-year-old defendant to life without parole simply is not as harsh a punishment as sentencing a 17-year-old to life without parole. This disparity runs directly counter to the Court's recognition in *Roper* that the diminished culpability of juveniles requires that their sentences be *less* severe than those of comparable adult defendants.

Moreover, as the Court also noted in *Roper*, the relative importance of rehabilitative aims are increased when considering the treatment of juvenile offenders because the rehabilitative potential of youth is intrinsically greater. The Court said this:

> The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Johnson*, *supra*, at 368, 125 L. Ed. 2d 290, 113 S. Ct. 2658; see also Steinberg & Scott 1014 ("For most teens, [risky or antisocial] behaviors are fleeting;

> they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood").

Id. at 570.

This rehabilitation consideration also applies with even greater force to a sentence of life without benefit of parole imposed on a juvenile. Because convicted juvenile offenders can no longer be put to death, society now will have an opportunity to determine whether they can achieve a degree of rehabilitation that would justify a consideration of parole. While it may be rational to conclude that a 40-year-old offender will not evolve into a quite different person over the next 20 years, the same cannot be said for a juvenile offender. As the Court recognized in *Roper*, the very nature of being a juvenile is that major life change is inevitable.

This is not to say that every juvenile sentenced to life in prison will achieve a degree of rehabilitation that will justify a consideration of parole. Perhaps many will not. But at least a few undoubtedly will. None of us can determine in advance which juvenile offenders will achieve a degree of rehabilitation sufficient to deserve a consideration of parole in 20 to 30 years. And no societal purpose is served by foreclosing in advance an ability to consider parole for the few that will.

While it was not a controlling factor in *Roper*, the Court also took notice of the fact that the United States was the only country that continued to give official sanction to the juvenile death penalty. The Court said this:

> It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. . . . The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.

Id. at 578. International opinion against the juvenile life without parole penalty is no less overwhelming.

The United Nations Convention on the Rights of the Child (CRC) places on the States an absolute prohibition on life without parole sentences for crimes committed by juveniles under the age of 18.[2] In

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[2] "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age." Art. 37(a) United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I. L. M. 1448, 1468-1470 (entered into force Sept. 2, 1990). And see Art 37(b): "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used

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addition, United States treaty obligations under Article 14(4) of the International Covenant of Civil and Political Rights ("ICCPR") requires that "in the case of juvenile persons," criminal trials "shall be such as will take account of their age and the desirability of promoting their rehabilitation."[3] The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty similarly provides:

> Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

These international standards concerning juveniles stress the rehabilitative aims of juvenile justice

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only as a measure of last resort and for the shortest appropriate period of time."

[3] The International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 175 ("ICCPR") was adopted by the U.N. General Assembly on December 16, 1966 and entered into force on March 23, 1976. On September 8, 1992, the United States, following the advice and consent of the Senate, became a party to the ICCPR, at which time the treaty became, coexistent with the United States Constitution and federal statues, the "Supreme Law of the Land." U.S. Const. art. VI.

systems, emphasizing the importance of discretion in treatment of juvenile offenders. They also recognize that imprisonment should be imposed only as a last resort, for the minimum period necessary, and that sentences be reviewed periodically in order to take into account the rehabilitation of the young offender as he matures and develops. Above all they require that the welfare and the best interests of children be taken into account in determining their treatment at all stages.

It is significant that most of America's closest allies, especially those who share our Anglo-American heritage, do not subject juveniles to mandatory sentences of life imprisonment without the possibility of parole. For example, the European Court of Human Rights observed that a mandatory life sentence for a 16-year-old convicted of murder would raise problems under the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (European Convention). *See Hussain v. United Kingdom*, 22 EHRR 1 (1996). In sentencing juveniles, the European court concluded that the term of detention "must of necessity take into account . . . any development in the young offender's personality and attitude as he or she grows older," and that a sentence of life imprisonment with no possibility of parole would constitute "a failure to have regard of the changes which inevitably occur with maturation." *Id.* at 2. The court concluded that a sentence of life imprisonment without the possibility of parole imposed upon a juvenile would violate Article 3 of the European

Convention, which prohibits "inhuman or degrading treatment or punishment." The European Convention has been signed and ratified by all European Union members and a total of 41 European nations.

Developments in U.K. law on criminal punishment are particularly relevant to the issue presented here in light of the historic ties between the countries and the Eighth Amendment's own origins.[4] In the case of child offenders, the English courts have given regard not only to retribution, deterrence and prevention of risk, but also to the welfare of the child offender himself. Since 1933, English law has explicitly required that "[e]very court in dealing with a child or young person who is brought before it, either as . . . an offender or otherwise, shall have regard to the welfare of the child or young person. . . ." Children and Young Persons Act of 1933, § 44(1), 23 Geo. 5. In accord with this policy, when the British Parliament abolished the juvenile death penalty, it did not replace it with mandatory life sentence, but with indeterminate prison sentences required to be periodically reviewed.[5] Other countries sharing our common law

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[4] The Amendment was modeled on a parallel provision in the English Declaration of Rights of 1689, which provided: "[E]xcessive Bail ought not to be required nor excessive Fines imposed; nor cruel and unusual Punishments inflicted." 1 W. & M., ch. 2, § 10, in 3 Eng. Stat. at Large 441 (1770).

[5] Section 53(1) of the Children and Young Persons Act of 1933 provides:

> A person convicted of an offence who appears to the court to have been under the age of 18 years at the

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heritage similarly have rejected life without parole for juvenile offenders.[6]

There is an undeniable customary international law norm against natural life imprisonment for juveniles. The CRC, which prohibits juvenile life without parole sentences, has been ratified by 191 of the 193 nations in the world. The United States and Somalia are the only 2 nations that have not ratified it; and even the U.S. and Somalia have *signed* it, indicating an intent to adopt it at some time. Numerous countries were involved in the negotiation and drafting of the CRC. The fact that the CRC is derived from laborious haggling and compromise inherent

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time the offence was committed shall not, if he is convicted of murder, be sentenced to imprisonment for life, nor shall sentence of death be pronounced on or recorded against any such person; but in lieu thereof the court shall (notwithstanding anything in this or any other Act) sentence him to be detained during Her Majesty's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Secretary of State may direct.

[6] For instance, the South Australia Crimes (Sentencing Procedure) Act (1999), dealing with "the most heinous crimes of murder and mandating a life sentence in such cases, expressly excludes from its operation a person who was less than eighteen years of age at the date of the offense." *Regina v. Robinson*, 2000 NSW LEXIS 636, at 34 (2000). The Supreme Court of New South Wales described the reasoning behind this law, noting "this is a legislative recognition of the significance that has always been placed by the community and the courts on the youth of the offender who comes to be sentenced, even for very serious crimes." *Id.*

in agreements involving multiple parties indicates that the final writings represent a consensus that virtually every nation in the world, including the United States, was willing to accept. The nearly universal ratification of the CRC, therefore, is evidence not only that these 191 states refrain from imposing life imprisonment on juveniles in actual practice, but also that they do so out of a sense of legal obligation. Accordingly, as at least one federal judge has explicitly opined, the CRC "has attained the status of customary international law." *Sadeghi v. INS*, 40 F.3d 1139, 1147 (10th Cir. 1994) (Kane, L, dissenting on other grounds).

The practice of nations and the other international standards outlined above, confirm the growing world-wide consensus against the practice of imprisoning juveniles for the term of their natural lives. Customary international law is "part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending on it are duly presented for their determination." *The Paquete Habana*, 175 U.S. 677, 700 (1900); *Garcia-Mir v. Meese*, 788 F.2d 1446, 1453 (11th Cir. 1986).

The principles underlying the decision in *Roper v. Simmons*, bolstered by the great weight of international law, point to the unconstitutionality of the juvenile life without parole sentence under the Eighth Amendment. The sentence is disproportional to any offense committed by a juvenile because juveniles are less culpable than adults and, importantly, more capable of rehabilitation.

It serves no rational public policy to minimize the likelihood of rehabilitation by foreclosing the possibility of parole. This case presents a significant constitutional issue that should be addressed by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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COURT OF APPEAL

FIRST CIRCUIT

2005 KA 2323

STATE OF LOUISIANA

VERSUS

DALE DWAYNE CRAIG

Judgment Rendered: Oct. 25, 2006

* * *

On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 09-92-0884

Honorable Bonnie Jackson, Judge Presiding

* * *

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* * *

BEFORE: WHIPPLE, McCLENDON, and WELCH, JJ.

McCLENDON, J.

Defendant, Dale Dwayne Craig, was charged by grand jury indictment with one count of first degree murder, a violation of LSA-R.S. 14:30, and pled not guilty.[1] The jury found him guilty as charged by unanimous verdict. Subsequently, during the penalty phase, the jury found the existence of the following statutory aggravating circumstances: at the time of the killing, defendant was engaged in the perpetration of aggravated kidnapping; at the time of the killing, defendant was engaged in the perpetration of armed robbery; and the offense was committed in an especially heinous, atrocious or cruel manner. By unanimous verdict, the jury recommended that defendant be sentenced to death. Defendant was sentenced to death by lethal injection.

The Louisiana Supreme Court affirmed defendant's conviction and sentence. ***State v. Craig***, 95-2499, p. 20 (La. 5/20/97), 699 So.2d 865, 876. Thereafter, the United States Supreme Court denied defendant's petition for certiorari. ***Craig v. Louisiana***, 522 U.S. 935, 118 S.Ct. 343, 139 L.Ed.2d 266 (1997). However, following the decision in ***Roper v. Simmons***, 543 U.S. 551, 578, 125 S.Ct. 1183, 1200, 161 L.Ed.2d 1 (2005), wherein the Supreme Court determined that "[t]he Eighth and Fourteenth Amendments

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[1] Zebbie Berthelot, James Conrad Lavigne, and Roy Maurer were also charged by the same indictment with the same offense.

forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed[,]" defendant moved for resentencing "to life in prison without benefit of probation, parole, or suspension of sentence."[2] The motion was granted, the death sentence was set aside, and defendant was resentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. Defendant then moved for reconsideration of sentence, but the motion was denied. He now appeals, designating as his one assignment of error, the trial court's refusal to reconsider his sentence. We affirm.

FACTS

The facts of the offense were set forth in detail by the Louisiana Supreme Court upon review of defendant's conviction and original sentence. *See* ***Craig***, 95-2499 at pp. 2-5, 699 So.2d at 866-68. However, for purposes of this appeal, we briefly set forth the essential facts of this case.

On September 14, 1992, defendant and three accomplices abducted the victim, Kipp Gullet, a freshman at Louisiana State University, at gunpoint from the parking lot of Kirby Smith Dormitory on the Baton Rouge campus of the university. The victim cried and begged for mercy as defendant and his

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[2] Defendant was approximately one week shy of his eighteenth birthday at the time of the offense.

accomplices drove the victim around in his truck. Defendant expressed his decision to kill the victim, but appeared to acquiesce to the suggestions of his accomplices to beat the victim unconscious, rather than kill him. After driving to a secluded construction site, defendant and James Lavigne marched the victim at gunpoint out to a grassy area. Lavigne used the butt of his gun to strike the victim in the head, causing the victim to fall to the ground. Lavigne then walked away. While the victim lay on the ground in a fetal position, the defendant knelt at his side and fired three bullets into his head, killing him. Defendant threatened to kill his accomplices if they said "one f–ing word." He also asked them if the group should kill anyone else while they were at it, but answered his own question by responding, "No, the game warden might get pissed."

EXCESSIVE SENTENCE

In his sole assignment of error, defendant contends the trial court erred in denying the defense motion to reconsider sentence because the sentence violated the United States and Louisiana Constitutions. He argues the sentence violates U.S. Const. amend. VIII, applicable to the states pursuant to U.S. Const. amend. XIV, and that "[t]he principles underlying the decision in ***Roper v. Simmons***, bolstered by continuing scientific research and the great weight of international law, point to the illegality of the juvenile life without parole sentence under the Eighth Amendment."

Defendant also contends that the sentence violates the supremacy clause, U.S. Const. art. VI, cl. 2. He argues that the United States became a party to the International Covenant on Civil and Political Rights (ICCPR) on September 8, 1992, and, under the ICCPR, criminal trials of juveniles shall be such as will take into account their age and the desirability of promoting their rehabilitation.

Defendant further asserts that the sentence violates La. Const. art. I, § 20 for the same reasons it violates U.S. Const. amend. VIII.

Upon invalidation of a provision of statutory capital punishment, the appropriate sentence to be imposed upon a conviction for first degree murder is the most severe penalty established by the legislature for criminal homicide at the time of the offense. ***State v. Tyler***, 342 So.2d 574, 577-78 (La.), *cert. denied,*431 U.S. 917, 97 S.Ct. 2180, 53 L.Ed.2d 227 (1977). In this matter, the penalty for first degree murder at the time of the offense was death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence in accordance with the determination of the jury. LSA-R.S. 14:30(C).

Imposition of a mandatory sentence of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence does not violate U.S. Const. amend VIII. *See* ***State v. Lucas***, 99-1524, p. 17 (La.App. 1 Cir. 5/12/00), 762 So.2d 717, 728 ("It is well settled that the mandatory imposition of a sentence of life imprisonment at hard labor without

benefit of probation, parole, or suspension of sentence for second degree murder does not constitute cruel and unusual punishment.")

Further, ***Roper*** does *not* support defendant's position. The court in ***Roper*** rejected the imposition of the *death penalty* on juvenile offenders under eighteen years of age. The decision addressed only the constitutionality of the *death penalty* on juvenile offenders under eighteen years of age and did not address the constitutionality of a life term for juvenile offenders under eighteen years of age. In fact, the court in ***Roper*** affirmed defendant's sentence of "life imprisonment without eligibility for probation, parole, or release except by act of the Governor." ***Roper***, 543 U.S. at 560, 125 S.Ct. at 1189-90.

In attacking the sentence of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence as violative of the ICCPR and the supremacy clause, defendant relies upon ***United States v. Duarte-Acero***, 208 F.3d 1282 (11th Cir. 2000). In that decision, the court noted that on September 8, 1992, the United States, following the advice and consent of the Senate, became a party to the ICCPR, at which time the treaty became, coexistent with the United States Constitution and federal statutes, the supreme law of the land. ***Duarte-Acero***, 208 F.3d at 1284.

Initially, it should be noted that the court in ***Roper*** discussed the ICCPR in reaching the decision in that case. ***Roper***, 543 U.S. at 567, 125 S.Ct. at

1194. Thereafter, the court affirmed the defendant's sentence of "life imprisonment without eligibility for probation, parole, or release except by act of the Governor." ***Roper***, 543 U.S. at 560, 125 S.Ct. at 1189-90. The argument that the decision stands for the proposition that a life-without-benefits sentence for a defendant who committed a crime before reaching the age of eighteen years violates either the ICCPR or the supremacy clause, ignores the result reached in the case. Further, even in regard to the ICCPR, art. 6, par. 5, prohibiting capital punishment for crimes committed by persons under eighteen years of age, the United States Senate only ratified the ICCPR with the proviso:

> [T]he United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.
>
> . . . .
>
> [T]he United States declares that the provisions of Articles 1 through 27 of the [ICCPR] are not self-executing.

138 Cong. Rec. S4783-84 (statement of presiding officer of resolution of ratification). *See* ***Beazley v. Johnson***, 242 F.3d 248, 264 (5th Cir.), *cert. denied*, 534 U.S. 945, 122 S.Ct. 329, 151 L.Ed.2d 243 (2001).

We do, however, recognize that Article I, § 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. ***State v. Hurst***, 99-2868, pp. 10-11 (La.App. 1 Cir. 10/3/00), 797 So.2d 75, 83, *writ denied*,00-3053 (La. 10/5/01), 798 So.2d 962.

In ***State v. Dorthey***, 623 So.2d 1276, 1280-81 (La. 1993), the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual Offender Law makes no "measurable contribution to acceptable goals of punishment" or that the sentence amounts to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime," he is duty bound to reduce the sentence to one that would not be constitutionally excessive.

However, the holding in ***Dorthey*** was made only after, and in light of, express recognition by the court that, "the determination and definition of acts which are punishable as crimes is purely a legislative function. It is the Legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional." ***Dorthey***, 623 So.2d at 1278 (citations omitted).[3]

In ***State v. Johnson***, 97-1906 (La. 3/4/98), 709 So.2d 672, the Louisiana Supreme Court reexamined the issue of when ***Dorthey*** permits a downward departure from the mandatory minimum sentences in the Habitual Offender Law. The court held that to rebut the presumption that the mandatory minimum sentence was constitutional, the defendant had to "clearly and convincingly" show that:

> [he] is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.

Johnson, 97-1906 at p. 8, 709 So.2d at 676.

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[3] The sentencing review principles espoused in ***Dorthey*** were not restricted in application to the mandatory minimum penalties provided by LSA-R.S. 15:529.1. *See* ***State v. Fobbs***, 99-1024 (La. 9/24/99), 744 So.2d 1274, 1275 (per curiam); ***State v. Davis***, 94-2332, pp. 11-12 (La.App. 1 Cir. 12/15/95), 666 So.2d 400, 407-08, *writ denied*, 96-0127 (La. 4/19/96), 671 So.2d 925.

We are also guided by two post-***Roper*** decisions involving a capital sentence imposed upon a defendant for a murder committed when he was seventeen years old. In ***State v. Wilson***, 03-1229 (La. 3/30/05), 899 So.2d 551, the court held, "Based on [***Roper***], the defendant's death sentence must be vacated and this case remanded to the district court with instructions to resentence the defendant to *life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.*" (Emphasis added). Following remand to the trial court for imposition of the life-without-benefits sentence, the defense argued, inter alia, a sentence below the mandatory life term was warranted due to the mitigating factor of the defendant's youth. ***State v. Wilson***, 40,767, p. 30 (La.App. 2 Cir. 8/23/06), ___ So.2d ___, ___. The trial court found the argument unpersuasive and imposed a life sentence upon the defendant. ***Id.*** The sentence was affirmed on appeal, with the court setting forth reasons we find equally applicable in the instant case:

> The jury and the trial court had the best opportunity to observe this defendant and it was their opinion that a sentence of death was appropriate for this defendant. Given the mindless brutality of this incident, the life-without-benefits sentence is not grossly disproportionate to the crime.

Wilson, 40,767 at p. 32, ___ So.2d at ___.

In the instant case, there was no reason for the trial court to deviate from the mandatory sentence of life imprisonment at hard labor without benefit of

parole, probation, or suspension of sentence. Defendant failed to clearly and convincingly show that because of unusual circumstances he was a victim of the legislature's failure to assign sentences that were meaningfully tailored to his culpability, the gravity of the offense, and the circumstances of the case. The sentence imposed was not unconstitutionally excessive and was not grossly disproportionate to the severity of the offense. Further, we specifically reject the argument that a sentence of life without the benefit of parole, probation, or suspension of sentence, of a defendant who was seventeen years of age at the time of the commission of the offense, is a *per se* violation of the prohibition against the imposition of excessive punishment.

This assignment of error is without merit.

SENTENCE AFFIRMED.

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

VS. NO. 2006-K-2782

DALE DWAYNE CRAIG

IN RE: Craig, Dale Dwayne; – Defendant; Applying for Writ of Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial District Court Div. K, Nos. 09-92-0884; to the Court of Appeal, First Circuit, No. 05 KA 2323

June 29, 2007

Denied.

BJJ

PFC

CDK

JPV

CDT

JTK

JLW

Supreme Court of Louisiana
June 29, 2007

/s/ Rai L. Daigle
Deputy Clerk of Court
For the Court

[SEAL]

Office Of The Clerk

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Notice of Judgment

October 25, 2006

Docket Number: 2005-KA-2323

State Of Louisiana
versus
Dale Dwayne Craig

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You are hereby served with a copy of the opinion in the above-entitled case. Your attention is invited to

Rule 2-18. Rehearing of the Uniform Rules of Courts of Appeals.

I hereby certify that this opinion and notice of judgment were mailed this date to the trial judge, all counsel of record, and all parties not represented by counsel as listed above.

/s/ CLC
CHRISTINE L. CROW
CLERK OF COURT